As you probably know, NFL Football recently sold many of their games to ESPN and TNT. Glasgow's municipally owned system will, therefore, be denied access to NFL Football. There's no other way to access this programming, so that seems to meet the definition of a monopoly to me.

A second barrier which has had a greater impact on us, and which we believe is going to be more significant in the future, is the use of the existing internal wiring. TeleScripps filed a lawsuit against us to prohibit us from using the wiring inside people's home.

Now, electric service, gas, water, and even the telephone companies now accept the fact that their system stops at the point their wires or plumbing enter the home. For years, the cable television industry maintained the same position—they didn't want to own the wiring inside the house because they didn't want to pay property tax on the internal wiring. But now faced with competition for the first time, they pulled a new rabbit out of the hat and claimed to own it all.

These two examples, coupled with the committee's own experience with the cable television industry assuredly complete the diagnosis that the existing business is an offensive monopoly growing like a cancer on the American public that needs immediate surgery.

There are scores of public power systems in the United States at the ready to commence this procedure. In order to get them started, I can only urge you—and if you want to promote competition—to pass a bill with the following provisions:

First of all, programming transmitted through satellite facilities must be made available to all competitive providers of cable or wireless cable service in a community on nondiscriminatory terms and conditions.

Second, all wiring inside the house and the underground drop cable used in connection with cable television service, whether installed in the past or in the future, is the property of the residential owner and available for his use, at his discretion, for whoever he wants to buy his service from.

Third, Please place no restrictions on municipal ownership of cable television. Municipal ownership power has done a dandy job of regulating in the past; let's not deplete in cable television.

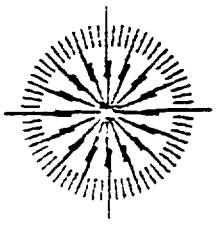
Fourth, allow local franchising authorities to set cable rates in those communities that don't want to go eyeball-to-eyeball with them.

Fifth, please remove the obstacles to revoking or denying renewal of a franchise when the service and rates are poor so that a municipality is not faced with multiple lawsuits when attempting to establish a competitive system.

Thank you.

Mr. BOUCHER. Thank you, Mr. Ray.

[The prepared statement of Mr. Ray follows:]



AMERICAN PUBLIC POWER ASSOCIATION
2301 M STREET NW WASHINGTON DC 20037 · 202/467-2900

Statement of
William J. Ray, Superintendent
GLASGOW ELECTRIC PLANT BOARD
on behalf of the
GLASGOW ELECTRIC PLANT BOARD
and the
AMERICAN PUBLIC POWER ASSOCIATION
before the
SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE
of the
HOUSE ENERGY COMMITTEE
on
CABLE COMMUNICATIONS ISSUES

April 19, 1990

I am William Ray, Superintendent of the Glasgow Electric Plant Board in Glasgow, Kentucky. I am pleased to testify before the Subcommittee on Telecommunications and Finance on behalf of the Glasgow Electric Plant Board and the American Public Power Association, the national service organization representing 1,750 publicly owned electric utilities throughout the country. We are grateful to this subcommittee for holding hearings that will focus on competition in the cable industry.

Many public power communities, like Glasgow, find that public ownership of cable complements their ownership of the electric utility. The cable system can be used for internal communications and energy management, while at the same time provide the community with reliable cable television service at reasonable rates. Further, the philosophy of low rates, efficient service, citizen

Exhibit A

participation, and local control is basic to both. Of the 52 municipal cable systems, 35 are located in public power communities. (A list of municipal systems is attached.) Currently, several more public power communities are considering establishing municipal cable systems.

Glasgow is in a situation similar to several other public power communities that are attempting to meet their consumers' needs by offering reliable cable television service at reasonable rates. In Glasgow's case, when consumer needs were not being properly met by the privately owned cable television system, the community looked to its municipally owned electric utility to institute a competitive cable service that would meet the needs of the people of Glasgow. The road to establishing our cable system has, however, been strewn with obstacles placed there by a local cable operator.

In the fall of 1987, the Glasgow Electric Plant Board made the decision to overbuild TeleScripps Cable Company in the city of Glasgow. In many instances overbuilds do not succeed because of the cost of installing a duplicative cable plant. In our case, overbuilding made good economic sense because the electric utility had the need for a city-wide, high speed data link (or local area network) to allow for present and future automation of the electric system, as well as other community communications needs. This allowed the costs of the cable plant to be spread among those other functions. Thus, the entertainment service does not have to shoulder the total burden of costs.

Since our intentions to establish a municipal cable system were first announced in December of 1987, TeleScripps has engaged in a no-holds-barred campaign to stop the progress of the project. They informed the Glasgow City Council that the move would be ill-advised and that they would file suit against

The cable lobbyists would have Congress believe that they face competition every day from videotape rental outlets, movie theaters, broadcast television, radio, home satellite dishes, and the like. That dog just won't hunt. If the American people will accept that, then there is no need to regulate the electric utilities because of the fierce competition we receive from flashlights, wood stoves, candles, and charcoal grills.

In order for a significant number of other municipalities to compete, Congress needs to address the intimidating and anticompetitive acts engaged in by the private cable industry. Such anticompetitive acts include denying access to desirable programming. For instance, Turner Broadcasting has refused to sell the Turner Network Television (TNT) channel to us and ESPN refuses to allow us to buy the rights to NFL football games from them. This year that means that around 18 NFL games that will be vigorously advertised on ESPN, CNN, CNN Headline, and SuperstationTBS will not be available to customers of our municipally owned system. How can a cable operator carry out such policies and still claim not to be a monopoly?

The other real barrier to head-to-head competition, about which you have heard relatively little today, is inside wiring. Each residence that is served by a cable operator must have internal wiring that connects one or more TV sets to the cable distribution system. Frequently, such wiring has been installed inside walls, under flooring, and in attics during construction of the dwelling. Often, it is difficult to replace in a manner that is acceptable to home owners. Our experience has been that a substantial number (about 25 percent) of potential customers are unwilling to switch cable operators if it means that their houses must be rewired.

them if they proceeded. They have lived up to that threat -- twice -- filing lawsuits in both federal and state courts alleging among other things that this introduction of competition is anticompetitive and contrary to the Sherman Act.

Further, the cable company warned that they would see to it that desirable programming would not be available to us. In some instances, they have been successful.

In other communities, despite the fact that the 1984 Cable Act encouraged competition, local cable operators have challenged municipal competition. Just this past January as the municipal electric utility in Paragould, Arkansas, was preparing to construct a competitive cable system, the local private cable operator brought suit, in both federal and state courts, in an effort to stop construction of the cable system. Another public power community facing a similar situation is Negaunee, Michigan. Because of poor rates and services and the inability to regulate the existing franchise holder, there are a number of public power systems in Massachusetts, Arkansas, Missouri, and Texas which are actively examining municipal cable ownership.

In my estimation, the cable television business, as it exists today, is an unregulated monopoly. The same situation existed in the electric power business a little over 50 years ago. In fact, the similarities between the electric power business of the 1930s and the cable television business of today are many.

Electric power made its debut in the United States in the 1880s and, like no other force in history, irresistibly shaped the future of the American people. In the early years, <u>electricity</u> was regarded as a dazzling experiment and a convenient luxury for the privileged. It was not long, however, before electricity was rightfully recognized as an essential part of everyone's daily

life. Electric companies came to be regarded as more than just suppliers of a fascinating, specialized product. They were charged with public responsibility in rendering a public service. When public sentiment evolved over the term of a few decades, electric companies became known as "utilities," a term previously reserved for train and bus lines and water companies. That same evolution of public opinion has been taking place in the cable television business.

The electric utility business began to grow like wildfire in the closing years of the 19th century. It grew in two directions. In the densely populated areas, private electric utilities grew and prospered. People in small towns and cities all across America could not always obtain electric service from privately owned companies. Lighting Main Street was not profitable in the early days. Less populous areas found themselves having to serve themselves or do without. Municipal ownership was simply a practical solution. It also was less costly. If this all seems familiar, it should. One hundred years later the same issues are being revisited with regard to cable television service.

In the areas where public power took hold, the electric utility belongs to the people it serves and is thus regulated by the force of the ballot. No outside regulation is necessary because the utility exists to serve its consumers and is regulated by its consumers. Private utilities are a different story. In the early days of the electric power industry, local governments freely granted electric power franchises to private companies in the belief that vigorous competition would ensure reasonable rates and reliable service. But helter-skelter competition encouraged companies to consolidate or, sometimes, to rig rates among themselves, rather than compete. It quickly became apparent that self-regulation of private companies through competition among them was not

working and, in 1907, New York and Wisconsin set up the first state regulatory commissions. Other states soon followed. We have learned the same lessons with cable television and in situations where no real competition exists, they must somehow be regulated.

In Glasgow, because we established a municipally owned cable television system, people can now freely choose between a privately owned cable provider (TeleScripps Cable Company) or their municipally owned system. Before the Glasgow Electric Plant Board was granted a cable television franchise, TeleScripps sold a basic service package consisting of about 22 channels for $14.25 per month. Premium channels were $10.95. Remote controls were $4.95. Today their basic package consists of about 40 channels and sells in some parts of town for $5.95 per month and in other parts for $8.95 per month. Premium channels and remote controls are $7.95 and $.95 per month respectively. That is not to say that such radical price reduction is entirely cost-justified. That is an issue in current litigation with TeleScripps. The point is that competition makes a big difference in both pricing and customer service. Clearly, customers are better served through a competitive system.

It was in the climate of the need for tighter regulation of private power companies and public outrage over their self-serving attitude that Franklin D. Roosevelt hailed the "undeniable" right of a community to establish public ownership of electric service as a "birchrod in the cupboard" to help protect consumers against abuse. The same reasoning holds true for the cable television business. Glasgow and a few other towns are proving that real head-to-head competition is an extremely effective means of marketplace regulation of cable operators.

The cable lobbyists would have Congress believe that they face competition every day from videotape rental outlets, movie theaters, broadcast television, radio, home satellite dishes, and the like. That dog just won't hunt. If the American people will accept that, then there is no need to regulate the electric utilities because of the fierce competition we receive from flashlights, wood stoves, candles, and charcoal grills.

In order for a significant number of other municipalities to compete, Congress needs to address the intimidating and anticompetitive acts engaged in by the private cable industry. Such anticompetitive acts include denying access to desirable programming. For instance, Turner Broadcasting has refused to sell the Turner Network Television (TNT) channel to us and ESPN refuses to allow us to buy the rights to NFL football games from them. This year that means that around 18 NFL games that will be vigorously advertised on ESPN, CNN, CNN Headline, and SuperstationTBS will not be available to customers of our municipally owned system. How can a cable operator carry out such policies and still claim not to be a monopoly?

The other real barrier to head-to-head competition, about which you have heard relatively little today, is inside wiring. Each residence that is served by a cable operator must have internal wiring that connects one or more TV sets to the cable distribution system. Frequently, such wiring has been installed inside walls, under flooring, and in attics during construction of the dwelling. Often, it is difficult to replace in a manner that is acceptable to home owners. Our experience has been that a substantial number (about 25 percent) of potential customers are unwilling to switch cable operators if it means that their houses must be rewired.

Our competitor in Glasgow, TeleScripps, was not oblivious to this bottleneck characteristic of cable wiring and has taken us to court in an attempt to keep us from using it. I understand that other cable operators in other communities have begun to copy this tactic of "dealing with" a new competitor -- particularly a municipally owned operator. Without going into the legal aspects of whether or not such wiring has become a "fixture" and therefore the property of the homeowner, it is obvious that without ready access to that wiring, a new competitor is at a substantial disadvantage. In order to facilitate head-to-head competition and get this issue out of the courts, the Congress needs to enact legislation specifying that inside wiring is the property of the homeowner and that all competitors have equal access to it. Such a policy would be similar to that adopted by the Federal Communications Commission with regard to inside wiring used for telephone service, which policy has been a significant factor in the ease with which a subscriber today can switch from one long distance telephone provider to another. It is no less vital to competition for cable services.

In summary, the solution to our present situation can be found in the lessons of the past. The cable television industry is a monopoly by its actions and a utility by public opinion. We have learned that there are two ways to tame such an animal. Regulation or competition. Regulation can be accomplished through the local franchising authority or the state public service commissions. On the other hand, by removing the barriers of access to programming and ownership of internal wiring, competition will take place naturally. In my opinion, both the consumer's needs and the need to advance the technology will be served by encouraging competition. Competition born of a desire by local

citizens to provide for themselves -- a desire to control, close to home, an essential service.

With all the opposition to competition that Glasgow has encountered, the success of our efforts must be judged according to the benefits to the community. The response of the incumbent cable operator to our competitive presence (other than the filing of lawsuits) has been instructive: for example, signal quality has improved, additional channels have been added, a greater commitment to local origination programming has appeared, and major rate reductions up to about 50 percent have occurred. Conservative estimates place the resultant savings to the people of Glasgow at over $1 million per year.

While, after eight months our municipal cable operation continues to operate substantially in the red, largely due to the legal obstacles thrown in our path by TeleScripps, the community as a whole is benefiting.

Since enactment of the 1984 Cable Act, the average monthly cable rate for the lowest level of service increased 29 percent, according to the General Accounting Office. At the same time, many communities were faced with dismal service from their cable operators. Several bills have been introduced with provisions to allow local franchising authorities to regulate basic rates and services. In view of the experience of many public power communities in the last six years, APPA strongly supports such rate regulation, as well as municipal ownership of cable systems. Such pluralism will help consumers obtain reliable service and reasonable rates.

APPA appreciates the fact that the subcommittee is holding hearings on cable issues. We recommend that cable legislation should:

- Place no restrictions on municipal ownership of cable television;

- Allow local franchising authorities to regulate basic cable rates;
- Remove obstacles to revoking or denying renewal of a franchise when the service and rates are poor so that a municipality is not faced with multiple lawsuits when attempting to establish a competitive system;
- Require that all programming transmitted through satellite facilities must be made available to all competitive providers of cable or "wireless cable" service in a community on nondiscriminatory terms and conditions; and
- Stipulate that all cable wiring inside the house and underground drop cable used in connection with cable television service, whether installed in the past or in the future, is the property of the residential owner and is available for use at the discretion of that person for connection with the facilities of any service provider.

COMMONWEALTH OF KENTUCKY
43RD JUDICIAL CIRCUIT
BARREN CIRCUIT COURT
CIVIL ACTION NO. 89-CI-269

TELESCRIPPS CABLE COMPANY,
a Colorado general partnership

PLAINTIFF

vs.

OPINION AND ORDER GRANTING
TEMPORARY RESTRAINING ORDER

A TRUE COPY
ATTEST: BOBBY WILSON, CLERK
OCT - 2 1989
BY _____ D.C.

ELECTRIC PLANT BOARD OF
THE CITY OF GLASGOW,
a Kentucky Corporation

DEFENDANT

The parties to this action are the plaintiff, Telescripps Cable Company (Telescripps) who, including its predecessors in title, have until recently operated the only television cable service in the City of Glasgow since the 1960's. The defendant, The Electric Plant Board of the City of Glasgow, (EPB) is establishing a communication facility which will provide cable television service plus other communication services, including electric load management communication. The parties are in competition to supply cable service to consumers in the Glasgow area since May, 1989. Duplicating signal receivers, transmission lines and service lines have been installed to the consumer's property.

This litigation involves the status of the lines previously installed by Telescripps or their predecessors in

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SEP 30 1989
BOBBY WILSON, CLERK
By _____ D.C.

Exhibit B

their distribution system to the consumer's television. This section or wiring, or a portion thereof, is in trade parlance called a "house drop." As the definition of the term "drops" is disputed, this opinion need not define the term but this opinion shall deal with the necessary wiring from the plaintiff's and defendant's distribution system or service lines to the consumer's television receiver. The portion of the wiring from the distribution line to the consumer's building is installed either aerially or underground from the distribution line to the building serviced. A terminal block is placed on the exterior of the building and either the underground or aerial line is attached to the terminal block. In the next phase, the line is grounded, a hole drilled through the exterior walls and the wiring is installed under the floor, over the ceiling or through the walls, where another hole is drilled and a wall plate is installed at a location near the television set. The final part of the wiring is a plug which is inserted into the wall plate which is attached to a converter interfaced with the television set. When service to a subscriber is discontinued, the converter at the end of the internal wiring is removed by unplugging the wiring at the wall plate which effectively terminates the service. The remaining interval wiring and material is not routinely removed by either party to this litigation. Leaving the internal wiring prevents minor damage to the user's property and since a future resident or the same customer may desire

future service the wiring may be successfully utilized by a reconnect.

When aerial service is utilized from the distribution line to the terminal block at the building the EPB installed its line to the terminal block on the building, duplicating Telescripps line to that point. When the subscriber agrees, the EPB installs the interior wiring which duplicates the entire "house drop" service both inside and outside the building.

Subscribers usually object to the duplication of the underground outside portion of the drop, due to damage to yards, driveways, sidewalks, etc. Also, some object to the duplication of the inside wiring being inconvenient and unsightly.

In the above instances, the EPB has elected to disconnect or cut the existing service at the terminal block on the building or cut the existing underground service near the distribution line and connect their cable system to the existing underground service or in the case of aerial service, to the terminal block at the building. Inside or underground wiring previously supplied, serviced and used by Telescripps to transmit their signal to the television set are thus utilized by the EPB thereby eliminating the subscriber's complaint.

Both parties seek a temporary injunction concerning their right to the use of the wiring in question.

Briefly, the EPB contends the wiring in dispute is the property of the individual subscribers or alternatively are fixtures permanently attached and are a part of the real estate

which they may use with the consent of the owner of the real estate.

Telescripps adopts the position the interior and underground wiring are personal property which belongs to them and if they are found to be attached fixtures, the wiring and materials constitute trade fixtures which they may under Kentucky law, remove when and if their license agreement with the subscriber is terminated.

Thus, the fundamental question is, who owns the underground and interior wiring from the distribution system to the television set.

Apparently no Kentucky case has considered this specific question and no case has been located which dealt with use of these "house drops" by a competing overbuilder of an existing system. The question of ownership of these service lines has been dealt with regarding the payment of personal property taxes and condemnation of such systems. Both sides cited and discussed the same cases which constitute the only authority dealing with the question.

THERE IS SUFFICIENT EVIDENCE OF RECORD TO CONCLUDE TELESCRIPPS HAS A SUBSTANTIAL PROBABILITY OF ESTABLISHING THE FOLLOWING FACTS:

1. Telescripps or their predecessors in title, bought and supplied the wire and materials for use in installing lines from

their transmission lines to the back of the consumer's television set. They alone determined and paid for the type and quality of wire to be installed and an installation fee was charged which did not fully compensate them for the cost and expense involved in the installation.

2. When an installation was made in an existing building, Telescripps provided workers to complete the installation, however, when a new building was constructed, on occasions the property owner's electrical contractor would install the interior wiring which was supplied without charge by Telescripps.

3. The cable company (Telescripps) had a right to control use of the wire after installation as to the number of television sets connected, etc., and installed their converters necessary for the transmission of signals at the end of the wire and face plate at the consumer's television set. This converter was removed when cable service was for any reason discontinued. If service was restored, the converter was plugged in the face plate and attached to the television.

4. The wiring from the transmission line to the consumer's house and into and through the house to the face plate plug in was not removed but left intact for possible future use in the event a later occupant of the building desired service.

5. Removal of the wire would occasion some minor damage to the user's building such as leaving a small entry hole into the building and removing fasteners and clamps, etc., which held

the line, junction boxes, terminals, face plates and other installations.

6. The only purpose or function of the wire installed from the transmission line to the television set is to carry television signal reception to the residence.

7. The material used to install the service line, if removed would be of little or no value to the consumer and in the past they have been rarely removed. The salvage value of the drop material was and is insufficient to justify removal by Telescripps or the EPB especially when the possibility of future use was considered. The ordinary maximum cost of installing overhead wiring from the transmission line to the television set was $40.00. However, the cost of underground wiring varies and may be much higher.

8. The intent of Telescripps and the consumer when the wiring was installed, was to permanently attach the wire to the building being served for its useful lifetime and no removal of the wire was anticipated by either party. As no competing signal source existed, there was no anticipation or intent by either party to change over use of the wiring to any other signal source at the time of the installation.

9. When Telescripps purchased the system they paid Kentucky-Tennessee for the entire system which included installed wiring and equipment.

10. Telescripps maintained and repaired the wire and other material extending from the transmission line to the consumer's

television set and was under FCC Regulations responsible for signal leaks, radiation or any defect in the line described.

11. The drops were listed as depreciable assets of Telescripps for income tax purposes and annual deductions have been taken on their federal and state income tax returns.

12. Telescripps annually reports a value of the installed wiring and equipment constituting the service line and interior wirings and pays taxes on their value to the Commonwealth of Kentucky.

13. No sales tax is charged for the material or installation costs.

14. The Electric Plant Board has cut the wire previously installed, both overhead or underground, as set forth in these findings by Telescripps and attached their transmission line to the existing line previously installed, serviced and used (as set forth in these findings) by Telescripps.

15. The cutting or disconnection of the service lines or interior wiring and use by the Electric Plant Board was without the consent, permission or acquiescence of Telescripps.

No Kentucky authority has been cited or discovered which dealt with the specific question of ownership of cable "drops" and interior cable wiring. Cases in other jurisdictions have ruled the interior wiring was the property of the cable company for the purpose of taxation of personal property or condemnation.

Continental Cablevision of Michigan v. The City of Roseville, 430 Mich 727; 425 N.W.2d 53 MIch (1988) is cited by

both parties. The Court held in this case "house drops" were the personal property of the cable company and were not fixtures in determining which of the alleged owners were responsible for payment of property taxes on the wiring. It is noteworthy the cable company was denying ownership of the interior wiring in this case.

The West Virginia Supreme Court held that house drops and internal wiring installed under an agreement to provide cable service were only license agreements as since they contained no specific term of years, were not sufficiently concrete to support an award for damages in a condemnation proceeding. However, the Court held wiring and equipment installed by reason of the license which were taken or damaged in condemnation, required compensation be paid to the cable company. West Virginia Department of Highways v. Wheeling Antenna Cable, 369 S.E.2d 39 (West Va. 1987)

The case of TV Transmission v. County Board, 338 N.W.2d 752 (Neb. Sup. Ct. 1983), the court apparently reached a different result in holding the "housedrops" were fixtures permanently attached to the real estate and were not subject to taxation as personal property belonging to the cable television company.

One consideration common to the decisions of these cases was the test used. While not all inclusive or controlling, it appears the test receiving general approval is:

1. Actual annexation to the realty or something

appurtenant thereto.

2. Appropriation to the use or purpose of that part of the realty with which it is connected.

3. The intention of the party making the annexation to make the article a permanent accession to the freehold.

Some argue that test 1 and 2 are also only further evidence of the parties' intent. See Doll v. Guthrie, 23 Ky. 77, 24 S.W.2d 947 (1929) and Tarter v. Turpin, Ky. 291 S.W.2d 547 (1956)

Also, the question of whether the wiring is a permanent fixture attached to the real estate, involves the further question of whether the wiring is a "trade fixture" which the installer, Telescripps, could remove at the revocation of the license by the subscriber.

It appears the nature of the interest of Telescripps in the real estate involved in this case can only be characterized as a license, revocable at will by either party. After notice to the cable company that the license is revoked, they may have a right to remove the wiring or after expiration of a reasonable time, to do so, or they could be said to have abandoned the wiring to the benefit, if any, to the landowner who could then consent to use by the defendants.

The interior and underground wiring was and is a necessary and vital part of any system furnishing television signals to consumers.

This wiring was furnished and/or installed by Telescripps to build a system in the area with the intent to permanently engage in the business of furnishing signals to subscribers. They maintained the wiring, controlled the use of the wiring and were responsible for its condition under federal regulations.

Telescripps intention to retain ownership of the wiring is shown by the treatment for tax purposes in:

1. including all existing wiring in a purchase agreement, depreciating the value on income tax returns, payment of personal property tax.
2. the value of the wiring and not charging sales tax on the value of the wiring installed.

No questions arise over the ownership of the converter located at the end of the wiring or Telescripps right to remove converters when service was discontinued.

There is sufficient evidence to indicate Telescripps has a substantial probability of successfully establishing ownership of the wiring at the trial of this case. Continued appropriation of the wiring will cause Telescripps to suffer immediate and irreparable harm for which there is no adequate remedy at law pending a final decision in this case. The equities of this situation, the possible appropriation of the use of the wiring in question by a competitor, justify the granting of a temporary injunction. The maintenance of the status quo is the temporary method of preventing irreparable harm until the legal system can finally determine ownership of the property in question.

The proof of the EPB indicated that due to deterioration and improper installation of the interior wiring existing in many houses, it was necessary they install completely new interior wiring in a high percentage of the cases. They can in such instances continue to install their own wiring without delay in securing subscribers. Further, they may overbuild any existing system and lessen any hardship they experience from this Order. Comparing the equities, the cost of overbuilding is small when compared with the possible appropriation of [redacted] similar property by a competitor. Customer resistance to the change does not justify a possible appropriation of anothers property for the convenience of the moment.

IT IS THEREFORE THE JUDGMENT OF THE COURT the defendant, the Electric Plant Board of the City of Glasgow, is temporarily restrained and enjoined from cutting, disconnecting, and/or attaching its signal transmission system to any wiring installed or previously used by Telescripps until the ownership of the wiring in question is finally determined by trial of the case.

This 30th day of September, 1989.

Shelley T. Riherd

HON. SHELLEY T. RIHERD, JUDGE
BARREN CIRCUIT COURT

Exhibit B

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AUG 2 8 1991

NANCY B. BOTTS, CLERK
By _____ D.C.

COMMONWEALTH OF KENTUCKY
43RD JUDICIAL CIRCUIT
BARREN CIRCUIT COURT
CIVIL ACTION NO. 89-CI-269

TELESCRIPPS CABLE COMPANY — PLAINTIFF

V.

JUDGMENT

A TRUE COPY
ATTEST: NANCY B. BOTTS, CLERK
AUG 2 8 1991
BY _____ D.C.

ELECTRIC PLANT BOARD OF
THE CITY OF GLASGOW

and

DANNY J. BASIL, HOWARD M.
JONES, DENNIS WILCUTT, SARAH
SMILA, WENDELL HONEYCUTT,
BARRY WOOSLEY and JOE JOHNSON,
on behalf of all others similarly
situated — DEFENDANTS

This cause was tried by jury on August 13, 1991 through August 21, 1991. At the beginning the Plaintiff, TELESCRIPPS CABLE COMPANY, being represented by counsel Honorable Dale Burchett, Honorable Susan Paradise Baxter and Honorable Burt Braverman; the Defendant ELECTRIC PLANT BOARD OF THE CITY OF GLASGOW, being represented by counsel Honorable H. Jefferson Herbert, Jr., Honorable Uhel O. Barrickman and Honorable R. Suzanne Weddle; and the Defendants DANNY J. BASIL, HOWARD M. JONES, DENNIS WILCUTT, SARAH SMILA, WENDELL HONEYCUTT, BARRY WOOSLEY and JOE JOHNSON, on behalf of all others similarly situated, being represented by

WPCT

counsel HONORABLE DANNY J. BASIL.

After all parties announced ready for trial, the following jurors, after voir dire by the parties, were selected to try the issues of the case:

Lazar C. Beaty
Ronnie D. Cloyd
Susan L. Elmore
Larry D. Sewell
Donald A. Bruton
Virginia Lou Davenport
Bobby G. Key
Jimmie G. Rhodes
Presley Monroe, Jr.
Mary K. Lewis
Joyce M. Rock
Edna E. Hoover

Said jurors were sworn to well and truly try the issues and a true verdict render in this action.

Thereafter, each party, by counsel, made opening statements. Plaintiff presented evidence in chief and introduced various exhibits before announcing closed. The Defendants presented evidence and introduced various exhibits before announcing closed. Thereafter, each party offered rebuttal proof, and at the close of all evidence, motions for directed verdict were made by each side, which were overruled by the Court.

The Court then instructed the jury as to the law of the case, and each party made a closing argument. The jury then retired to consider its verdict, and upon its return, the jury returned the following verdict, signed by the nine (9) jurors as so indicated:

"[We the jury] find the wires to be owned by the owners of the

land and buildings (the class defendants)."

/s/ Lazar Beaty
/s/ Ronnie Cloyd
/s/ Susan L. Elmore
/s/ Larry D. Sewell
/s/ Donald Bruton
/s/ Virginia Lou Davenport
/s/ Bobby Key
/s/ Jimmie G. Rhodes
/s/ Presley Monroe, Jr.

IT IS THEREFORE ORDERED AND ADJUDGED that the Plaintiff's Complaint be dismissed; that it take nothing thereby for its claim of trespass and conversion; that the temporary restraining order entered by the Court on September 30, 1989, be and is hereby dismissed as appears in this Court's Order of August 20, 1991; that Plaintiff's motion for temporary and permanent injunction be, and is, hereby denied; that the underground burial of cable wiring and the interior wiring for cablevision within buildings in the city limits of Glasgow, Kentucky, be and are ordered and adjudged to be the property of and owned by the owners of the land and buildings; and, that all Defendants recover from the Plaintiff their costs incurred in this action.

IT IS FURTHER ORDERED that there is reserved for further action of this Court any claim for damages by the Defendant ELECTRIC PLANT BOARD OF THE CITY OF GLASGOW resulting from the granting of the temporary restraining order against it dated September 30, 1989.

3 WRH

Exhibit B